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Attorneys for Petitioner NEXTEER  
AUTOMOTIVE CORPORATION

**UNITED STATES DISTRICT COURT**  
**NORTHERN DISTRICT OF CALIFORNIA**

IN RE: DMCA SECTION 512(H)  
SUBPOENA TO GITHUB, INC.

MISC. ACTION NO: 3:23-MC-80164 LJC

**DECLARATION OF JEFFREY S. KOPP IN  
SUPPORT OF PETITIONER NEXTEER  
AUTOMOTIVE CORPORATION'S MOTION  
TO COMPEL ENFORCEMENT OF SUBPOENA  
TO GITHUB, INC. PURSUANT TO 17 U.S.C. §  
512(H), TO IDENTIFY ALLEGED  
INFRINGEMENT(S)**

**DECLARATION OF JEFFREY S. KOPP**

I, Jeffrey S. Kopp, declare as follows:

1. I am an attorney licensed to practice law in the State of California and before this Court. I am a Partner at Foley & Lardner LLP, which represents Nexteer Automotive Corporation (“Nexteer”). I have personal knowledge of the matters set forth in this declaration and could competently testify to those matters if called upon to do so.

2. I am authorized to act on Nexteer’s behalf. I submit this declaration in support of Nexteer’s Motion to Compel Enforcement of Subpoena to GitHub, Inc. (“GitHub”) pursuant to the Digital Millennium Copyright Act (“DCMA”), 17 U.S.C. § 512(h) (the “DMCA Subpoena”) and Fed. R. Civ. P. 45(d)(2)(B).

3. Nexteer’s product and technology portfolio includes, among others, electric power steering systems that utilize proprietary software code to operate safely and properly.

4. According to Nexteer’s website, Nexteer’s 2022 reported revenue was \$3.839 billion globally. Nexteer’s customers include leading vehicle OEMs such as BMW, Ford, GM, Stellantis, Toyota, and Volkswagen. (See Ex. 1 [Nexteer Press Release])

5. On June 16, 2023, Nexteer filed a Motion for Administrative Relief Granting Non-Disclosure Order, seeking the non-disclosure order that GitHub insisted it required to prevent GitHub from notifying the relevant users that their account information was going to be disclosed. (See Dkt. No. 5, Motion for Administrative Relief). This motion was denied without prejudice.

6. On June 19, 2023, counsel for Nexteer communicated with GitHub’s Legal Support team and sought confirmation that GitHub, in response to the subpoena, would be providing information on users who downloaded Nexteer’s confidential code, as well as those who posted the code. (See Ex. 2 [Email Correspondence])

7. On June 20, 2023, GitHub responded and directed Nexteer to its “legal demands” webpage, which “describes what we produce with a subpoena.” That webpage indicates that, in response to a subpoena, GitHub will provide: 1) Name(s) associated with the account, 2) Email address(es) associated with the account, 3) Billing information, 4) Registration date and termination date, 5) IP address, date, and time at the time of account registration, and 6) IP address(es) used to access the

1 account at a specified time or event relevant to the investigation. (See Ex. 2).

2 8. The webpage does not specify that GitHub will only provide information for users who  
3 post infringing data, and not users who download infringing data.

4 9. The same day, Nexteer responded and sought to clarify that GitHub would provide user  
5 information for users who downloaded the code, as well as those who posted the code. GitHub then  
6 responded that it would not produce downloading users' information, only posting users' information.  
7 (See Ex. 2).

8 10. Counsel for Nexteer and representatives from GitHub's legal team continued to confer  
9 via email but, as of the date of the filing of this Motion, were unable to come to an agreement. (See Ex.  
10 2).

11 11. Upon information and belief, the users are current or former Nexteer employees that had  
12 or have access to this highly confidential, proprietary data.

13 I declare under penalty of perjury under the laws of the State of California and Michigan that the  
14 foregoing is true and correct.

15 Executed on June 30, 2023 at Detroit, Michigan

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17 /s/ Jeffrey S. Kopp

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